
(1947) 07 AHC CK 0009
In the Allahabad High Court

Noel Frederick Barwell

APPELLANT

Vs

John Jackson and Others

RESPONDENT

Date of Decision : 21-07-1947

Acts Referred:

Citation : AIR 1948 All 146

Hon'ble Judges : Verma, C.J;Mootham, J;Malik, J

Bench : Full Bench

Final Decision : Allowed

Judgement

Verma, C.J.—I have had the advantage of reading the judgments prepared by my brothers Malik and Mootham and also of discussing the case with them. Having given the matter my careful consideration, I find myself in agreement with my brother Malik.

2. There can be no doubt that the members of an institution like, the Club in question must be governed by the contract by which they have agreed to be bound and that that contract is to be found in the Rules of the Club. I am, further, satisfied that there is no rule in the rules of this Club laying down the circumstances, and the manner, in which a dissolution of the club could take place. In fact, there is no rule providing for the dissolution of the Club. All that Rule 6 says is that, if a winding up or dissolution does take place, the property is to be distributed in a certain manner.... I agree with my brother Malik's opinion that this rule cannot fairly be interpreted as a rule providing for the dissolution of the Club. Its only object was to make it clear that, in case a winding up or dissolution ever took place-in circumstances and in a manner not specified - then, of the several classes of members, The only members who would be entitled to a share in the property, if any, would be the "permanent members". When and how a winding up or dissolution could take place is not laid down anywhere.

3. I also agree with my brother Malik in holding that, upon a true interpretation,

the extinction of the Club is not a matter which can be held to come within Rule 49.

4. The inevitable conclusion, thus, has to be that a dissolution of the Club cannot be brought about by a majority vote and that the Club can be dissolved only if all the members unanimously agree that it be dissolved.

5. I concur in the decree proposed by my brother Malik.

Malik, J.

6. This suit was filed by Mr. Noel Frederick Barwell in the Court of the District Judge of Kumaun. It has been transferred to this Court under its extraordinary original jurisdiction.

7. The plaintiff is a member of a social Club known as the Ranikhet Club in Rani Khet in these Provinces, membership whereof is confined, according to the present rules, to - (a) All commissioned officers of His Majesty's Naval, Military and Air Forces; (b) all covenanted officers of the Indian Services; (c) Military Chaplains; (d) Other gentlemen approved by the Committee.

8. The main object of the Club was to provide social amenities to the officers of the Government, Civil and Military. Large plots of land were given on leases to the Club by the Government on specially favourable terms. The leases are of the year 1906 and from them it appears that the land was given by the Secretary of State on a nominal rent of Re. 1 per year and without charging any premium. This rent of Re. 1 was made payable by instalments.

9. The Club is possessed of extensive grounds, a Club house, a golf course, a golf club house, tennis courts, a billiard room, etc. We have no means of ascertaining the financial condition of the Club prior to 1938, or its old rules, as the relevant papers and documents have all been weeded out. From the materials placed before us it appears, however, that up to 1938 the Club had no reserve funds.

10. From the written statement of Mr. John Jackson, the present Secretary of the Club, it appears that the Club made a profit of Rs. 87 in the year ending 31-3-1939, and incurred a loss of Rs. 9 up to 31-3-1940, and a loss of Rs. 87 up to 31-3-1941. The years 1940 and 1941 were of course abnormal years as the war had started in September 1939, and Ranikhet, like every other hill station in India, must have suffered for lack of visitors. Some time later, conditions however were materially altered as Rani Khet became an important military centre and a large number of troops and officers convalescing or on leave started visiting the place and between March 1942 and February 1945 the Club made enormous profits, the total of which came to about rupees 50,000. The war came to an end in 1945, and the visits of military personnel to Rani Khet also decreased, with the result that in the period ending 28-2-1946, the profits which had amounted to over Rs. 28,000 in 1944-1945 dwindled down to Rs. 1692-4-9.

11. Mr. John Jackson was elected the Secretary of the Club in 1946 and took over

charge on 4th January. In January and February he was away from Rani Khet and from March 1946, he commenced his work. In May 1946, on going through the accounts he found that the losses for April 1946 were Rs. 750. In the month of May or June Mr. Jackson brought this matter to the notice of the Committee and in their meeting dated 24th May there was an attempt made to increase the income of the Club by raising the various charges. According to Mr. Jackson the position did not substantially improve, and in view of the fact that the British personnel, who generally used the Club, were thinking of leaving the country due to political changes and he apprehended further losses, he called another meeting of the Committee on 26-8-1946. It was at that meeting that the Committee unanimously resolved to call an extraordinary general meeting of the Club on 3rd September to consider the question of the dissolution of the Club.

12. At this meeting the defendants, other than Capt. G.E. Sweeney who had given a proxy to Mr. Jackson, were present in person and the plaintiff also attended. Two resolutions were passed which have led to the present litigation.

13. The first resolution was that the Club was to be closed down permanently as from the morning of 1-1-1947, and the second was that no more permanent members were to be elected. Both these resolutions were passed by a majority. The first resolution was opposed by Mr. Barwell, but was supported by the others except Major Michelson who remained neutral. The second resolution was also opposed by Mr. Barwell, but the other members supported it.

14. Mr. Barwell challenges the validity of these resolutions on various grounds and has filed this suit for a declaration that the resolutions were void and inoperative and for other reliefs set out in his plaint.

15. The members of the Club are divided under the rules into three categories, the first consisting of ordinary members. The name of a candidate who wants to be elected an ordinary member has to be proposed by one member and seconded by another. After he is duly proposed and seconded, the member is elected by ballot and the ballot box is kept open for ten days. After the result of the ballot is declared, a member has to pay an entrance donation which under the rules must be paid before he is entitled to exercise any of the privileges of membership. This entrance donation is RS. 30 payable in one sum or in three monthly instalments of RS. 10 each. An ordinary member has to pay a monthly subscription of Rs. 11 if single, and a subscription of RS. 13 per month, if he has a wife. This monthly subscription is payable only during his stay in Ranikhet. Half subscriptions are payable for periods of half a month or less, but if less than four days in any one month, Re. 1 per day is payable. In months during which the subscriber is absent temporarily from the station and on leaving the station he is not liable to pay the monthly subscription provided he has given notice in writing to the Secretary in advance. During the period that he is away his membership appears to be in suspense and he can renew his membership on payment of the monthly subscription.

16. There is no rule under which a member automatically ceases to be a member on leaving Rani khet and it is on that ground that the defendants allege that the rule in the Club is that once a person is elected an ordinary member he remains a member unless he resigns or is expelled from the Club. On behalf of the plaintiff, however, reliance is placed on Rule 22, and it is said that a member terminates his membership when he ceases to pay the monthly subscription and he only renews his membership on payment of the monthly subscription.

17. According to the defendants, and, besides the statement of Mr. John Jackson, we have the statement of their counsel, Mr. Peare Lal Banerji, that all those who had been ordinary members of the Club ever since its foundation and who were alive and had not resigned or been expelled were still members of the Club and were entitled to a share in the assets. On behalf of the plaintiff, however, it is pleaded that the plaintiff and the defendants are the only ordinary members of the Club.

18. The next class of members are the temporary members of the Club. The names of temporary members have not to be balloted for and all those who are eligible for ordinary membership and their wives can become temporary members. For temporary membership an application has to be made to the Secretary in writing and the Secretary obtains the approval of the Committee. The temporary members have to pay monthly subscriptions or subscriptions for part of the month in the same way as ordinary members.

19. The last class are the honorary members who have not to pay any monthly subscription.

20. The temporary and honorary members have the right to enjoy all the privileges of a member, but have no voice in the management of the Club nor the right of voting for the election of candidates for membership or in any other matter.

21. The plaintiff has been visiting Rani Khet ever since 1921 and he had been off and on a temporary member of the Club. It was not till 1941 that he became an ordinary member of the Club, but he has never been a member of the committee. Mr. Jackson, who is at present the Secretary and the Treasurer, became an ordinary member in 1948. Defendant 2, Mr. Horsman, became an ordinary member in 1941 and he was on the relevant dates the President of the Club. Two of the other defendants, Major H.J. Thomson, defendant 5, and Mr. P.W. Ferris, defendant 8 became ordinary members in 1945. The four other defendants, Major G.Z. Michelson, Capt. S.J. Smith, Capt. D.D. Smith and Capt. G.E. Sweeney, did not join this club as members till 1946. Of these Capt. Sweeney became a member in April 1946 and Capt. D.D. Smith was declared elected on 3-9-1946, but did not pay his entrance donation till 26-9-1946.

22. The plaintiff has attacked the first resolution passed on 3-9-1946, on the ground that it was ultra vires and invalid. The contention put forward on his behalf is that the members of the Club had no right to resolve on a dissolution.

The resolution has been further challenged on the ground of mala fides and bad faith. I may take up the question of mala fides and bad faith first which, to my mind, can be easily disposed of, though I regret to say that considerable time was taken in developing that point.

23. The point is covered by issue 1 and is in these terms:

Did the voting at the Extraordinary General Meeting of 3-9-1946 in favour of the two resolutions, or of either of them amount to acts done in bad faith? If yes, are they on that ground void and inoperative?

24. So far as I was able to understand this plea, the case of Mr. Pathak, the learned Counsel for the plaintiff, seems to be that the defendants were merely pretending when they said that it was not possible to run the Club and that their real motive was to divide the assets. The further act of bad faith, if I have understood him rightly, was that the defendants were actuated by malice as they did not want that the assets of the Club should fall under the control of Indians and, therefore, they gave certain reasons which were not in fact true. It appears to me, however, that although the persons present at the meeting may have had their own grounds for supporting the resolution, yet if the members of the Club were entitled to resolve on dissolution, it would not be for this Court to consider the motive why they did so. The case must, therefore, to my mind, be decided on pure questions of law as regards the rights of the members.

25. The main point, therefore, for consideration is : What law should govern the question of dissolution of a members' Club? A social club is not a profit sharing institution and the analogy of a partnership would not apply, though counsel for the plaintiff, and the defendants, have both cited cases relating to partnership. A social club not being a profit making concern, the terms on which the members would associate with each other depend generally on their choice and they are governed by the rules that they may frame for their own conduct. In *Lyttelton v. Blackburne* (1875) 45 L.J. Ch. 219, which was for restoration of a member who had been expelled from the Junior Naval and Military club, which was a proprietary club, Bacon V.C., observed:

Clubs have always rules of management and there is no general law applicable to members as such except the law of fraud; they are governed by their rules, and the law must be extracted from the rules.

26. The bill was dismissed on the ground that the committee in the honest exercise of the power which had been delegated to them had felt constrained to expel the plaintiff from the Club and the Court would not interfere with their discretion.

27. The difficulty arises when on any particular point the rules are not clear or there are no rules at all, and then the question may arise what rule of law should govern the rights of the parties. Ordinarily, a Court of law has nothing to do with social relationships between the members and Courts would generally refuse to

interfere unless the question for decision is intermixed with their rights in the property of the club. I will deal with this point in greater detail when I come to the issue as regards jurisdiction.

28. When a member joins a club, he agrees to accept the rules and, if there is a rule to the effect that the rules may be altered or modified in future, he may be deemed to have agreed in advance to any possible modification in the future. In *Harington v. Sendall* (1903) 1 Ch. 921 at p. 926 Joyce J. held:

When the plaintiff became a member he thereby became entitled to the benefits and privileges of the club, and was to be taken to have declared his submission to the then rules and regulations. I say "the then rules and regulations" because the words are not "such rules and regulations as may be made from time to time," but "the following rules and regulations." In other words, he agreed to be bound by the written contract that is to be found in the rules. Unfortunately, as I think, those rules did not, nor indeed, do the present rules, contain any provision for the making of amendments or alterations from time to time.

29. Dealing with the question whether the majority has an inherent power to alter the rules, he said:

Indeed, so far as there can-be said to be authority upon the subject, and, as I think, upon principle, there is no more inherent authority in the members of the club by a majority in general meeting to alter the rules against the wishes of a minority than there is in the members of any other society or association the constitution of which depends upon and is matter of contract - there being as there is here a written contract expressing the terms upon which the members associate together

30. The question arose in that case in this way. The plaintiff was a member of the Oxford and Cambridge University Club. The subscription payable by members when the plaintiff joined the Club was eight, guineas. The Club had been founded in the year 1830 and the annual subscription then was five guineas. The subscription had been raised on three different occasions. So that at the time when the plaintiff joined, the subscription payable was eight guineas. On. 28th May 1902, it was resolved by a large majority that the annual subscription should be increased to nine guineas. The plaintiff, who was not present at the meeting, refused to pay and brought the action and which was decided in his favour, on the ground that, in the absence of any provision for any alteration and amendment of the rules, the majority had no right to raise the subscription.

31. To decide, therefore, the question whether the resolution in question in this action was valid, we have first to determine whether the rules of the Club make any provision and lay down the circumstances under which the Club should be dissolved and the method by which it should be dissolved.

32. Mr. Peare Lal Banerji has urged that "all questions" within which term the question of dissolution must also be included, must be determined by a majority

under Rule 49 of the rules.

33. I have already mentioned that there is no copy of the rules of the time when the Club was started and the question, therefore, must be determined on the interpretation of the rules that are now in existence on the assumption that they are valid and were properly made. Besides the rules, published in March 1946, there are the rules and byelaws for the years 1941 and 1942 (Exs. 1 and 2). Learned Counsel have, however, assured us that there is no material difference for our purposes between the rules of March 1946 and the rules of 1941 and 1942.

34. While considering this question, one must bear in mind that ordinarily, when a club of this type for civil and military personnel is started it is not likely that the members should think of a future dissolution, and on a fair interpretation of the rules, we have to consider whether there are any rules as to the circumstances under which and the method, by which the club should be dissolved, or the rules were framed only for carrying out the objects of the club and its day to day administration.

35. In Rule 6 it is provided that upon the winding up or the dissolution of the club, any assets left over shall be distributed among the permanent members of the club in equal shares. The same rule provides that notice of the dissolution will be published in England and in India and that all claims will be submitted by members within four months of the date of publication of the notice. It is conceded that this is the only rule which, makes any mention of dissolution.

36. It is further admitted that there are no rules laying down the circumstances under which the members might agree to dissolve the club. Mr. Banerjee has, however, argued that as there is Rule 6 it must be accepted that the question of dissolution was also present to the mind of the framers of the rules and when they did not set out the circumstances under which the dissolution was to take place that was because they left that question entirely to the discretion of the members. He has strongly urged that the question of internal management of the club was left to the committee and under Rule 36(f) the committee was to make, alter or cancel any bye - laws relating to the internal economy of the club, such as the prices of refreshments, the hours of opening and closing, etc., and "all other questions" - within which term, he says, must necessarily be included the question of dissolution - were to be decided by a majority under Rule 49.

37. Apart from the fact that there is no provision in the rules setting out the circumstances under which the club may be dissolved, it appears to me to be very unlikely that the question of dissolution of the club should be governed by the rule of a bare majority at any general meeting under Rule 49 when under Rule 48 stricter formalities are required even for a modification or rescission of an old rule or introduction of a new rule for which a two-thirds majority of the members present is necessary.

38. In this club, by reason of the fact that Rani Khet had a shifting population,

the number of temporary members and ordinary members who were not in Rani Khet was always much larger than that of ordinary members present at Rani Khet, who were paying their monthly subscription and were, therefore, active members. The ordinary members, who were away from Rani Khet and were, therefore, not paying their subscriptions, were dormant members, if I may use that word, and had a right to enjoy full benefit of membership on payment of the monthly subscription when they again came to Rani Khet. It does not appear to me to be reasonable that Rule 49 should be so construed as to provide that the Club could be dissolved by & bare majority at a meeting of the few ordinary members present in Rani Khet, whose number never exceeded ten or fifteen, and the rights determined of hundreds of temporary members and other members who, though they were not paying members at the time, had a right in the property of the club and had a further right, whenever they chose, to pay their subscriptions and revive their membership.

39. In *Blake v. Smither* (1906) 22 T.L.R. 698 where Rule 7 of the Rules of the Friendship in Unity Benefit Society of Westerhamhill, Kent, an unregistered friendly society, contained a provision that the decisions were to be by a poll "at which a single majority should be sufficient", Kekewich J. held:

Rule 7 of the society's rules applied only to the affairs of the living society and not to a dissolution and distribution of the funds.

40. The resolution for dissolution having been passed by a majority, he observed:

In the present case there was no provision in the rules to winding up the society, and unless the members could agree there could be no dissolution, except by an order of the Court.

41. The argument that, where the rules were silent on the point, the majority of the members had power to decide upon a dissolution was not accepted.

42. Counsel for the parties have cited before us a large number of cases relating to friendly societies and when we put to them the question whether those decisions were relevant, it was stated by Mr. Peare Lal Banerji that the law relating to clubs and friendly societies was the same. Mr. Pathak also stated that both being based on contract, the decisions relating to friendly societies should be taken as a proper guide.

43. The true legal position of an unregistered club has not yet been satisfactorily formulated. It is not a person in the eye of law. It is therefore not capable of holding property. We find, however, that there are valuable properties attached to these clubs. As the object is not profit sharing the law of partnership does not apply. As there is no "charity" in the case, if there is any idea of a trust, it must be a trust, for the original members and any attempt to make it a trust for unascertained persons (future members) would create difficulties and may come into conflict against the rule against perpetuities. According to Maitland (see Maitland's *Collected Papers*, Vol. III, page 377), inequity the original members

were the only "destinatories" but at the same time they contracted to observe certain rules. He has pointed out that the result is not satisfactory. He says:

The ownership in equity that the member of the club has in land, buildings, furniture, books etc., is of a very strange kind. (1) Practically it is inalienable. (2) Practically his creditors cannot touch it by execution. (3) Practically, if he is bankrupt, there is nothing for them. (4) It ceases if he does not pay his annual subscription. (5) It ceases if in accordance with the rules he is expelled. (6) His share - if of a share we may speak - is diminished whenever a new member is elected. (7) He cannot demand a partition. And (8) in order to explain all this, we have to suppose numerous tacit contracts which no one knows that he is making, for after every election there must be a fresh contract between the new member and all the old members.

44. We may, therefore, proceed upon the basis that the relationship between the members of the club is governed by the law of contract and, if the members have agreed to certain terms which are embodied in the rules then in existence, or to be made thereafter, in accordance with the terms agreed upon by the members, those rules must govern their relationship. If the rules provide that the decision on a particular question must be by a majority, the decision would bind all the members unless the act complained of is a fraud on the minority or is ultra vires the association. In all other matters about which the rules are silent, the majority does not appear to me to have any right to coerce the minority.

45. I may, by way of illustration, mention the case of partnership where, before the modification made by the Indian Contract Act in India and the Partnership Act in England, a partnership could be dissolved only by the unanimous vote of the partners.

45a. On the question of interpretation of the rules and as to whether Rule 49 of the Club Rules should be interpreted to include a question of dissolution, a large number of cases have been cited before us. I consider it necessary, however, to mention only some of them.

46. In *Thelluson v. Viscount Valentia* (1907) 2 Ch. 1 the Hurlingham Club Was formed in the year 1868, for the purpose of providing a ground for pigeon shooting, polo and other sports. The membership consisted of shooting and nonshooting members. The rules of the Club had made provision for amendments and alterations of the rules. By a majority it was decided in the year 1905, that pigeon shooting should be discontinued. The plaintiffs then filed the suit out of which the appeal had arisen for a declaration that no such resolution ought to have been passed. Cozens-Hardy, Master of the Rolls, was of the opinion that the resolution was validly passed and dismissed the suit. He expressed his agreement, however, with the view that vague and general words which may be found in the memorandum of association of company or the articles of partnership would not entitle a company or a partnership really formed for one particular object into being turned into something wholly different.

47. Similarly, in *Hole v. Garnsey* 1930 A.C. 472 it was held that an alteration in the rules of a society registered under the Industrial and Provident Societies Act, 1898, was not binding on members who had neither voted for the alteration nor otherwise assented to it. That case, related to a society called Wilts and Somerset Farmers Ltd. and Rule 64 provided that the rules may be amended by resolution of a three-fourths majority at a special general meeting. Under Rule 12 individual members were required to hold at least one share for every 20 acres or fraction of 20 acres farmed by them up to 500 acres, and at least one share for every 40 acres or fraction of 40 acres above 500. These rules were amended in the year 1921, and it was provided that individual members shall hold at least five shares for every 20 acres or fraction of 20 acres farmed by them up to 500 acres and at least three shares for every 40 acres or fraction of 40 acres above 500. The question arose whether those members who had not consented to the alteration in the rule were bound to pay for the increased number of shares. Dealing with the question how far the decision of the majority was binding on those who had not agreed to it, Lord Atkin observed as follows:

If a man enters into association with others for a business venture he commits himself to be bound by the decision of the majority of his associates on matters within the contemplated scope of the venture. But outside that scope he remains dominus, and cannot be bound against his will.

Dealing with interpretation of Rule 64, his Lordship said:

The only relevant question in this case appears to be whether Rule 64 giving the power to a three fourths majority at a special general meeting to amend the rules confers a power to amend those rules in respect of the fundamentals above mentioned so as to bind a dissenting member. I think that the consent of a member to such a rule as Rule 64 is not an assent to have the purposes of the society or the amount of his share subscription altered against his will. Full effect is given to the rule by limiting its operation as against dissentients to matters which are within the scope of the administration of the venture as originally framed. I should myself regard as within this definition such matters as the annual subscription to a social or other club which may fairly be regarded as a matter of internal administration. But an increase in capital contribution is something quite different. I reserve the question whether an amended rule so passed is ultra vires the society so as to be entirely void and therefore not binding on even the assenting majority.

48. With this view of Lord Atkin, the other Law Lords also agreed. Lord Tomlin said:

Does a power enabling a majority to amend the rules justify as against a dissenting member any alteration? Whatever, where, as here, neither by the statute nor by the rules themselves is any one rule expressed to be more fundamental and unalterable than any other?

The answer in my judgment must be in the negative. In construing such a power

as this, it must, I think be confined to such amendments as can reasonably be considered to have been within the contemplation of the parties when the contract was made, having regard to the nature and circumstances of the contract. I do not base this conclusion upon any narrow construction of the word "amend" in Rule 64, but upon a broad general principle applicable to all such powers.

49. In view of the above observations, I am strengthened in my opinion that Rule 49 of the Club rules cannot be interpreted to include a question of dissolution and consider that, when the members framed Rule 49, they committed themselves to be bound by the decision of the majority of their associates only on matters within the contemplated scope of the venture.

50. In *Morgan v. Driscoll* (1922) 38 T.L.R. 251, the rules of the Secular Catholic Clergy Common Fund Association, which was founded in the year 1701, provided for decision of all questions by a majority and there was a provision for repeal and alteration of the rules framed from time to time. Dealing with the question whether a particular amendment was valid or not, it was argued that the amendment was invalid as it was incompatible with the fundamental objects of the association and went to the foundation of it. Sargant J. held that the alteration complained of did not, in his view, go to the foundation of the association and was not incompatible with its fundamental objects and was, therefore, valid.

51. It has been argued by Mr. Pathak on the basis of this decision and the decision of the House of Lords in *Hole v. Garnsey* 1930 A.C. 472, already referred to, that the rules of every association may be divided into two classes - the rules relating to fundamentals and the ordinary rules. Learned Counsel went on to urge that the fundamental rules could not be altered even by a unanimous vote of the members, though, if the rules provided for amendments, the other rules could be ant ended. It is not necessary for me to go into this question as the point does not arise in this case, but if I may say so without meaning any disrespect, the cases cited above have entirely been misunderstood. All that their Lordships intended to say was that the rules of any club being framed for the purpose of carrying on the objects of the club, ordinarily any power to amend such rules must be limited to the contemplated scope of the original rules and that under the general powers of amendment the alteration should not affect the foundation of the club or should not be incompatible with its fundamental objects.

52. Dealing with this question Lord Han - worth, Master of the Bolls, in *Doyle v. White City Stadium Ltd* (1935) 1 K.B. 110 said:

When these rules as altered are still for the purpose of carrying out the original purpose of the society or body of persons, the altered rules are made binding on the plaintiff. If there was an attempt fundamentally to alter the purpose for which the rules had been originally drawn up, the prospective agreement to adhere to-fresh rules, or any alteration in the rules, would not apply. It is quite plain from

the decision in *Thelluson v. Viscount Valentia* (1907) 2 Ch. 1 that if and so long as the rules are akin to the purpose for which a society exists, there is no inherent, objection to an alteration of those rules or to further rules being made for the same purpose.

53. Learned Counsel has then urged that the-dissolution of the club necessarily involves the sale of the assets and he has supported his argument by a reference to Halsbury's Laws of England, Hailsham Edition, Vol. 4, p. 521 and also to the decision in *Sudarsanam v. narasimhulu* ("02) 25 Mad. 149 at p. 166 where dealing with the dissolution of a partnership their Lordships held that the decree would not be for partition of partnership property but for sale of its assets.

54. Learned Counsel has urged that a dissolution necessarily implies the sale of assets of the club and as the sale is not possible by a majority against the wishes of the minority, the dissolution by a majority is also impossible.

55. For the proposition that the property of a club cannot be transferred by the majority, learned Counsel has relied on the case in *Murray v. Johnstone* (1896) 23 R C S 981. In that case a silver trophy, known as the Waterlow Cup, had been presented for competition by the curliers of the County of Dumfriesshire by Sir Sydney Waterlow and as a winner for three consecutive years was to keep the cup, the Upper Annandale Club won the cup and it became its property. At a meeting of the Upper Annandale Club, by a majority of votes against the objection of the minority, it was decided that the cup should be gifted to Johnstone who was the custodier for the cup during the winning sessions 1893 and 1894. It was held that the majority had no such power and the gift was, therefore, invalid.

56. In *Vick v. Toironen* 12 D L R. 299 it was held by the Ontario Supreme Court, Appellate Division, that the property of a voluntary society could not be diverted by the majority of its members, against the wishes of the minority, from the purpose for which it was acquired by their contributions and devoted to a purpose alien to and in conflict with the fundamental principles of the society.

57. As I am of the opinion that the rules do not make any provision for dissolution of the club by a vote of the majority and that in the absence of the rules the dissolution must be by a unanimous vote, the question does not arise. In case, however, I was of the opinion that the rules had provided for dissolution of the club by a majority and that the resolution was valid, then, to my mind, the necessary consequences of the dissolution of the club were bound to follow, and I do not see how it could then be said that as some property of the club had to be sold, the resolution, for that reason alone, was bad. The cases that have been cited by learned Counsel for the plaintiff were cases where the property of a going concern had been transferred and it was naturally held that the property was the common property of all the members and it must, therefore, be utilised for the object for which they had contributed and could not be sold against their wishes. These precedents are, therefore, not very relevant for the purposes of

this case.

58. The next argument of learned Counsel is based on the law of trust. He has urged that the property of the club vests in the committee of management and the ordinary and temporary members are all beneficiaries and that under the law of trust all beneficiaries must join in the extinction of the trust. In a sense, "the office bearers of any public body or institution including a club, are trustees, but I am afraid this cannot be of much assistance to learned counsel. There is no question in this case of the right of the officers of the club to put an end to it and I have already said that if there is a trust it is in a very limited sense. This is a case where the members of the club have passed a resolution by a majority, that the club should be dissolved, and the decision must, therefore, to my mind, rest on the decision of two simple questions, firstly whether the rules of the club have made any provision with regard to its dissolution and, if so, whether the rules have been complied with, and secondly, if there is no such rule, whether the resolution is valid and should be given effect to.

59. I have already expressed my opinion that, in my view, there are no rules laying down the mode of dissolution or the circumstances under which the club could be dissolved, and we have, therefore, to see whether the resolution for dissolution of the club is valid. I have already held that under the law of contract a dissolution is not possible unless all the members agree and the majority has, therefore, no right to coerce the minority.

60. It has been urged by Mr. Banerjee that the result of this decision would be the tyranny of the minority and one member, as in this case, would have the right to hold up the winding up of the Club which the majority of the members find it impossible to carry on. I do not think any such difficulty would arise in practice.

61. In a case where the minority is unreasonable and the majority has decided upon a dissolution, the Court can presumably go into the question whether it is just and proper that the Club should be dissolved and if the Court comes to the conclusion that it is just and proper that the Club should be dissolved, the Court would probably refuse to give the minority any relief in case they have come to Court as plaintiffs or in case the majority has been driven to seek the assistance of the Court, the Court would probably assist them. The ease, however, has not been put before us on those lines, and learned Counsel for the defendants has not asked us to consider the question and to hold that under the circumstances of this case it is just and proper that the Club should be dissolved. He has based his defence on the absolute right of the majority to dissolve the Club.

62. In *re Lead Company's Workmen's Fund Society* (1904) 2 Ch. 196 Warrington J. held at p. 204:

If it (the Court) finds that the interests of those to whom the funds belong cannot be carried into effect *modo et forma* as they have at other times determined amongst themselves they shall be divided, then I think the Court has

power to interpose and say that justice cannot be done by allowing these rules to go on as they have gone on hitherto, because if that is allowed certain members of the society will get benefits to which, as between themselves and the other members, they were never entitled, and the only way in which justice can be administered on equitable principles will be to endeavour to do the best one can to give to each member of the society that interest in the funds to which he is justly entitled, and that can only be done by winding up the society. It seems to me, therefore, on that ground I must make an order for the winding up of the society and its affairs, and for the distribution of the fund among the persons beneficially interested therein.

63. The above case related to an unregistered friendly society and I have already said that parties have agreed that the principles relating to friendly societies are applicable to the case of a members' society. Mr. P.L. Banerji at one stage argued that under Sections 270 and 271, Companies Act, a members' club can be wound up by the Company Court. It has been held, however, that those sections relate to a company, which has a place of business, and they cannot refer to a club.

64. The last point urged by Mr. Pathak for the plaintiff was that there was an implied contract when the club was started that it would be run and that that implied contract could not be set aside without the consent of all the parties to the contract.

65. A number of cases have been cited by Mr. Banerji to show what is an implied contract. It is not necessary for me to discuss them here. I need only cite the case in *Shirlaw v. Southern Foundries Ltd.* (1939) 2 K.B. 206 where dealing with the question as to what is an implied term of a contract Mackinnon L.J. said:

Prima facie that which in any contract is left to be implied and need not be expressed is something so obvious that it goes without saying ; so that, if while the parties were making their bargain, an officious bystander were to suggest some express provision for it in their agreement, they would testily suppress him with a common "Oh, of course".

66. Mr. Banerji has relied on implied contract for his argument that it must be deemed that the parties agreed that they would dissolve the club when they found it was not possible to run it. He has also urged that there is an implied contract to the effect that the rule of the majority would prevail unless there was an express clause to the contrary. Neither of these two propositions come under the rule laid down by Mackinnon L.J. If the question of dissolution had been brought up by an officious bystander who had asked, whether the ordinary members present in Rani Khet, who were paying their subscriptions, had a right to dissolve the club by a majority of vote, it does not appear to me at all likely that everybody would necessarily have said to him, "Oh, of course", specially as the club had been started mainly for the benefit of a fleeting population - the members of various services who were temporarily in Rani Khet.

67. For the proposition that the rule of the majority was an implied term of the contract, Mr. Banerji has cited the case in *M' Kenny v. Mayor and Corporation of Barnsley* (1894) 10 T.L.R. 533. There the question was whether an unregistered society should be registered under the Friendly Societies Act, 1855, and dealing with the question whether the Society should or should not be registered, the Master of the Rolls observed:

And in the absence of any special rule to the contrary, it seemed to be a general rule arising from the nature of things that, where a number of people joined together for some purpose and must for the carrying out of that purpose govern themselves, the only way in which they, could do so was by the will of the majority.

68. His Lordship went on to hold that registering an old society did not mean forming a new society, nor did it alter it in any way. The observations must, therefore, be confined to the facts of that case that the natural law of the rule of the majority would govern only for the purpose of carrying out the object for which they had come together and formed the association, tout that does not justify the assertion that on all questions the majority have a right to impose their will on the minority. It cannot be said here that the resolution of 3rd September was for the carrying out of the purpose for which the club was founded. In the absence of that basic requirement the case cannot help the defendants.

69. The case in *Oldhamour Lady's Sick and burial Society v. Taylor* (1887) 3 T.L.R. 472 has, to my mind, no relevance. That was a case where after the registration of an unregistered society, which was registered by a vote of the majority the minority then having decided to secede, the question was whether the registered society could claim the money due to the unregistered society and it was held that it was the same society and there was a continuity of existence.

70. In *Wise v. Perpetual Trustee Co. Ltd.* 1903 A.C. 139 it was held by the Privy Council that in an ordinary club, there was a tacit understanding, judicially recognised, that no member was liable to pay to the funds of the club anything beyond the subscriptions required by its rules and the committee of management had, therefore, no right to claim contribution. Three points were prominently brought out in the judgment of Lord Lindley, firstly, that a club was not a business partnership, secondly that there was an implied term in the contract that a member was only liable for the subscription according to the rules and for nothing more and thirdly, that the rules of the club laid down the law for the members. We are not concerned with the first two points. As regards the third, I have already held that the rules would govern the relationship between the members, if there were any rules on a particular point. That case is, therefore, not very helpful for the decision of the case before us.

71. In *Finch v. Oakes* (1896) 1 Ch. 409 all that was held was that a member had a right to retire at his own pleasure and that it was not necessary that his

resignation should be accepted. I do not see what bearing that case can have on the facts of this case.

72. Having, therefore, carefully considered the authorities and the arguments of learned Counsel I have come to the conclusion that there are no rules for the dissolution of the club and the club can, therefore, be dissolved only under the general law of contract. I am also of the opinion that the law requires, in the absence of any rules that all members of the club must agree to its dissolution. I am further of the opinion that in a fit case the Court has jurisdiction to dissolve a club.

73. On the last point Mr. Banerji has cited some authorities and has urged that the Court is bound to exercise its jurisdiction according to the wishes of the majority. I do not think the cases cited by him support his contention.

74. Mr. Banerji has relied on the case in *re Lead Company's Workmen's Fund Society* (1904) 2 Ch. 196, but a careful study of the report would show that their Lordships never considered themselves bound by the wishes of the majority, but considered the question whether the justice of the case required that the society should be wound up and its funds distributed among its members.

75. The only point decided in *re Victoria Society, Knotting by* (1913) 1 Ch. 167 was whether a friendly society, was a society within the words of Section 267, Companies (Consolidation) Act, 1908, and could, therefore, be wound up by that Court and it was held that it could be wound up.

76. In *Waterhouse v. Murgatroyd* (1831) 9 L.J. Ch. 272 all that was held was that the Court, in view of the special circumstances of the case, would not hesitate to protect the majority of the members and would refuse to grant an injunction which was within the discretion of the Court.

77. I am, therefore, of the opinion that the above cases do not lay down that a Court is bound to accept the wishes of the majority as regards the dissolution of a club.

78. I have already said that the question, whether apart from the resolution passed on 3rd September the facts and circumstances are such that this Court should approve of the dissolution of the club, has not been urged on behalf of the defendants, and we are, therefore, not in a position to examine for ourselves the question whether the club, should or should not be dissolved.

79. Apart from this, I am not satisfied that we can say in this case that there was any resolution passed by the majority. Besides the temporary members, as they have no share in the assets it may not be necessary to consider their wishes, there are a large number of ordinary members who are living outside Rani Khet and are, therefore, not paying their subscriptions but who have not resigned and have not been turned out, and according to the case of the defendants are, therefore, still members of the club. To my mind, the interests of such ordinary members are vitally affected by a resolution dissolving the club. They have not

only an interest in the assets, but also they have a right whenever they come back to Rani Khet or whenever they pay their subscriptions, to become full members and, to my mind, the club cannot be dissolved without ascertaining their wishes on the point. Under the rules the subscription is only payable when a member is in Rani Khet. He has no liability to pay any subscription when he goes out. There is no rule that he ceases to be a member when he leaves Rani Khet. Even the members of the Committee are not expected to pay their subscriptions when they are not in Rani Khet, though they are elected for the year and continue to hold their office in spite of the fact that they are not in Rani Khet and are not paying their subscriptions. I am not prepared to uphold the plaintiff's contention that under Rule 22 of the Club's rules these members cease to be members as soon as they go out of Rani Khet. I am inclined to hold, as urged by the defendants, that they are still members of the club, and I am, therefore, of the opinion that it was necessary that their wishes should have been considered.

80. On the grounds set out by me above, I am of opinion that the two resolutions passed by the club on 8-9-1946, were void and inoperative.

81. I have already expressed my opinion as regards issues 4 and 5. As regards issue 5, I do not think that the members of the Committee threatened to commit any breach of trust. They only resolved on 26th August to place their views before the members and the resolution was passed by some of the members on 3rd September. As regards issue 4, I have already held that the Committee of Management are, in a sense trustees who held the property for the benefit of the members of the club.

82. In view of the fact that the plaintiff's right to use the Club and its property is being affected by the resolutions of 3rd September 1946, the plaintiff has clearly a cause of action and no arguments have been addressed to us on issue No. 6.

83. The only other issue that remains for determination is issue No. 8 whether the Court has any jurisdiction to interfere with the resolution of the Club dated 3rd September 1946. Mr. Banerji has urged that the Court has no jurisdiction. He has cited before us the decisions of the Court of Appeal and the House of Lords in *Weinberger v. Inglis* (1918) 1 Ch. 517 and *Weinberger v. Inglis* 1919 A.C. 606. In that case the question was whether the action of the Committee of Management of the Stock Exchange in London in rejecting the application for membership of Weinberger, who was a German by birth, was right, and the Court held that a person had a right to have his application honestly considered and if it was considered honestly and there was no objection by the authority competent to consider it, the Courts would not substitute their own judgment for the judgment of the Committee. I may mention that in that case the good faith of the Committee was admitted and their bona fides were not in question. That case has nothing to do with a question like the one before us which affects the rights of the parties in the property and in the enjoyment of the amenities of the Club.

84. The case in *Dawkins v. Antrobus* (1881) 17 Ch. D. 615 was a case of expulsion of a member. The Court held that it would not interfere against the decision of the members of a club professing to act under their rules, unless it could be shown either that the rules were contrary to natural justice, or that what had been done was contrary to the rules or that there had been mala fides or malice in arriving at the decision. On the facts it was held by the Court of Appeal that malice was not made out and the action failed.

85. The case in *Richardson Gardner v. Freemantle* (1871) 24 L.T. 81 was also a case of an expulsion of a member from a club, and according to the rules of the Junior Carlton Club in case the conduct of any member either in or out of the club house was in the opinion of the Committee injurious to the character and interests of the Club, the Committee had the power to recommend such member to resign. The Committee came to the conclusion honestly that the member should be asked to resign and it was held that when the Committee had exercised their rights bona fide the Court had no jurisdiction to interfere and reinstate the expelled member.

86. None of those cases lend support to the proposition for which Mr. Banerji had contended.

87. In *Baird v. Wells* (1890) 44 Ch. D. 661, Stirling J. held that in the case of an ordinarily constituted club, in which members had rights of property, a member whose rights had been interfered with by the Committee was entitled to ask the Court to consider whether the rules of the Club had been observed; whether anything had been done which was contrary to natural justice; and whether the decision complained of had been come to bona fide. As these questions affected the rights of a party to property in which he had an interest, I fail to see why the Courts should not have any jurisdiction to give relief. Stirling J. in the case cited above observed:

I have no doubt whatever that the foundation of the jurisdiction is the right of property vested in the member of the society, and of which he is unjustly deprived by such unlawful expulsion.

88. He has, however, made it clear that mere rights of persons to associate without any interest in the property could not be the subject-matter of litigation in a Court of law.

89. Here, there can be no doubt that the resolutions of 3rd September, if carried into effect, would affect the rights of the plaintiff in the property of the club in which admittedly he has proprietary interest. I, therefore, fail to see how it can be urged that this Court has no jurisdiction to interfere even if it comes to the conclusion that the resolutions were not valid, in law. I am, therefore, of the opinion that the Court has jurisdiction, in the circumstances, to entertain this case.

90. Lastly comes the question of reliefs. Mr. Banerji for the defendants has not

said anything about the reliefs claimed by the plaintiff. On behalf of the plaintiff, however, it is urged that all the reliefs claimed by him should be granted. I am, however, of the opinion that only the first two reliefs should be granted to the plaintiff. These reliefs are for a declaration that the resolutions passed on 3rd September 1946, that "the Club be closed down permanently as from the morning of 1st January 1947" and "no more permanent members be elected" are null and void and inoperative and for permanent injunction restraining the defendants and their servants and agents from acting upon either of the above two resolutions. No case has been made out for the appointment of a Receiver or for the framing of a scheme. The members of the Club being all responsible persons, I have no doubt that in view of the expression of opinion by this Court that the resolutions are invalid and in view of the injunction granted that they should not act on the-resolutions passed on 3rd September 1946 they would conduct themselves accordingly.

91. I would grant the plaintiff the costs of this suit.

Mootham, J.

92. This is an unusual suit. The plaintiff and the defendants are members-according to the plaintiff the only members of an unincorporated members" club known as the Rani Khet Club. At an extraordinary general meeting of the Club held on 3rd September 1946, two resolutions were passed, the first that the Club be closed down permanently as from the morning of 1st January 1947, and, secondly, that no more permanent members be elected. The meeting was attended by nine persons, one of whom it is con ceded was not a member and, therefore, not entitled to vote. Of the eight members seven were present in person and one by proxy. Six members voted in favour of the first resolution, one abstained and one voted against. Seven members" voted in favour of the second resolution and one against. In each case the plaintiff was the dissentient member. Under the Rules of the Club seven members present in person or by proxy constituted a quorum at a general meeting and it is not disputed that the meeting of 3rd September was duly convened.

93. The plaintiff subsequently wrote to the other members of the club who had been present at the meeting suggesting that a further meeting be called and the two resolutions which had been passed at the meeting held on 3rd September be revoked. This proposal did not find favour and on 28-9-1946, the plaint in this suit was filed. The plaintiff complains that the passing of the two resolutions on 3rd September were acts not done in good faith, that they were in themselves unreasonable and beyond the powers of the meeting, and that consequently they were void and inoperative. He has asked for a declaration to that effect, for the issue of a permanent injunction to restrain the defendants and their servants from acting upon, either of the resolutions or upon other resolutions of like intent, for the appointment of a receiver and for the provision of a scheme to maintain the club in esse.

94. The defendants deny that they acted in bad faith, and contend that the passing of the two resolutions was an act within the powers of the members of the club and that the plaintiff has no cause of action.

95. The suit was originally filed in the Court of the District Judge of Kumaun but was subsequently transferred to this Court for hearing.

96. The Rani Khet Club, which, as I have said, is an unincorporated members' club, was founded some fifty years ago to promote general, social and literary intercourse between its members. There is no evidence as to the financial position of the club prior to the year 1939, and we do not know whether by that time it had accumulated any reserves. In 1939 and in the two succeeding years it just paid its way, but in the next three years, war years, in which there was a considerable influx of military officers and visitors in Rani Khet, the profits made by the Club were very considerable. By the end of 1945 the assets of the Club amounted to over a lac of rupees. In 1946 the profits of the Club fell to what they had been in 1942, and it is the view of the defendants that it is not possible in future to maintain the Club save at a loss. In these circumstances it was the view of the Committee, of which the plaintiff was not a member, that the time had come when, the Club should be dissolved and the assets of the Club distributed among the members. The plaintiff was very strongly opposed to any suggestion that the Club be dissolved. He disagreed with the view that the Club could in the future be run only at a loss, and in his view there was no reason why the Club could not be continued by the admission as members of gentlemen, who though eligible under the rules, had not in fact previously applied for membership.

97. The first question which arises is whether this Court has any jurisdiction to consider and decide a question which, it is said, is one relating to the internal management of the club. The foundation of the jurisdiction is the wrongful deprivation, or threatened deprivation, of a member of the right of property vested in him : *Harington v. Sendall* (1903) 1 Ch. 921. In *re St. James Club* (1852) 2 De M. & G. 383 Lord St. Leonards, L.C., pointed out that a member has an interest in the general assets of his club so long as he remains a member. His status as a member is not affected by a break up of the club which does not amount to a dissolution in the eye of the law, and it therefore appears to me that any dispersal of the assets of the club consequent upon such a break up does prejudicially affect his interest in the general assets and gives, therefore, a Court (jurisdiction to intervene).

98. The plaintiff joined the club as an ordinary member in 1941, and he thereupon became bound by the rules of the club which constituted the contract between himself and the other members; and in my view it is upon the construction of this contract that the decision in this, case turns.

99. In construing any document the rule is that it must be construed as a whole in relation, to its subject-matter and to any other relevant circumstances, and it

is to my mind a very relevant circumstance that what have here to be construed are the rules of a club, that is of a society of persons associated together for social intercourse. As Lord Romilly said in *Hopkinson v. marquis of Exeter* (1867) 5 Eq. 63. p. 67:

These clubs are very peculiar institutions. They are societies of gentlemen who meet principally for social purposes, superadded to which there are often certain other purposes, sometimes of a literary nature, sometimes to promote political objects, as in the conservative or the Reform Club. But the principal objects for which they are designed are social, the others are only secondary. It is therefore necessary that there should be a good understanding between all the members, and that nothing should occur that is likely to disturb the good feeling that ought to subsist between them.

100. Now the plaintiff's case as developed in argument was (if I have understood it correctly) that the rules of the club neither state the circumstances nor make provision for the manner in which it may go into dissolution, that to those matters which have been expressly stated in the rules there must be added an implied term, that the club shall not go into dissolution if it be possible in fact for it to continue as a club; and that, therefore, unless the impossibility of the continuance of the club be proved it cannot be dissolved even though such be the desire of all the members. I confess I find the greatest difficulty in understanding the latter part of this argument. The short answer appears to be that no such term can be implied. As was pointed out by Scrutton, L.J., in *Reigate v. Union Manufacturing co., (Ramsbottom) Ltd.* (1918) 1 K.B. 592 at p. 605:

A term can only be implied if it is necessary in the business sense to give efficacy to the contract; that is, if it is such a term that it can confidently be said that if at the time the contract was being negotiated someone had said to the parties "what will happen in such a case," they would both have replied "of course, so and so will happen; we did not trouble to say that; it is too clear." Unless the Court comes to some such conclusion as that, it ought not to imply a term which the parties themselves have not expressed.

101. It is in my opinion quite impossible to hold that such a term is necessary in any sense to give efficacy to the contract between the members. The plaintiff's contention appears to me to involve a misapprehension as to the nature of a club, for it assumes that the latter is some form of quasi-corporate body which exists apart from its members who have a legal duty, to maintain it in existence as long as it is practicable to do so. No authority was advanced, nor I venture to think could one be advanced, in support of this proposition and I only refer to it because it did, I think, underlie a good deal of the argument advanced on behalf of the plaintiff.

102. Turning now to the rules of the Club, by which of course all the members have agreed to be bound, what do we find? It is clear that the possibility of the

dissolution of the club was not a matter ignored by the framers of the rules, for the first part of Rule 6 provides that upon a dissolution the surplus assets should be paid to I or distributed among the permanent members by which obviously is meant "members" as I defined in Rule 2 - in equal shares. The second part of Rule 6 is, I think, important and I shall refer to it further below.

103 The management of the club is entrusted I to a committee which has power, inter alia, to I approve applications for temporary or honorary membership, but under. Rule 21 such temporary or I honorary members have no voice in the management of the club nor in the election of members. Rules 42 to 51 deal with general meetings which may be either ordinary or extra-ordinary. An ordinary general meeting has to be held on the last Friday in April in each year, and at that meeting any motion may be brought forward provided that prescribed notice has been given (Rule 44). Any other general meeting is an extraordinary general meeting. It may be called (Rule 45) by the committee or on the requisition of seven members, and notice of the meeting and the objects for which it has been called must be posted on the club notice board at least seven days before the meeting. Then come Rule 48 and 49, the former providing that no existing rule shall be modified or rescinded and no new rule shall be made without the sanction of two-thirds of the members present and voting at the meeting. Rule 49 provides that in a general meeting (but subject presumably to Rule 48) all the motions or propositions shall be carried or rejected by a majority of votes, each member having one vote and the President of the meeting a casting vote.

104. The rules are admittedly not very well drafted, and it is evident that there is no rule which refers specifically to the dissolution of the club other than Rule 6. But is this conclusive in favour of the plaintiff's case? I think not. It is, in my judgment, of great importance to observe that there is no restriction placed by the rules on the nature of the resolution which may be brought before an extraordinary general meeting, and the rules provide that any resolution shall be carried by a majority which, in the case of an alteration of or addition to the rules, shall be of two to one of the members present. The plaintiff says that a resolution to dissolve the club cannot be so carried at a general meeting, because such a resolution relates not to a matter of management which is all he says. With which the members in a general meeting can deal - but to a fundamental matter which required the assent of all the members.

105. I think that there can be no doubt so far as a club is concerned that some matters are more fundamental than others; and consequently a power given to a majority of members to amend the rules, of that club does not result in a dissentient member being bound by every amendment duly passed by a majority irrespective of the nature of that amendment. In *Hole v. Garnsey* 1930 A.C. 472 the rules of a society registered under the Industrial and Provident Societies Act, 1893, provided that the rules could be amended by-resolution of a three-fourths majority at a special general meeting, Acting under this resolution the society so altered the rules as to require members of the society to subscribe for additional

shares, and the House of Lords held that such alteration was not binding on member who neither voted for it nor otherwise assented to it. In his speech Lord Atkin said, at p. 495:

Amongst the matters in respect of which the individual does not agree to be bound in invitum appear to me to be the purposes of the association and the amount of money which he will contribute to his associates for those purposes.

and Lord Tomlin stated the same point in somewhat more general terms, when he said, at page 500:

There is however the second consideration. Does a power enabling a majority to amend the rules justify as against a dissenting member any alteration whatever, where, as here, neither by the statute nor by the rules themselves is any one rule expressed to be more fundamental and unalterable than any other?

The answer in my judgment must be in the negative-In construing such a power as this, it must, I think be confined to such amendments as can reasonably be considered to have been within the contemplation of the parties when the contract was made, having regard to the nature and circumstances of the contract. I do not base this conclusion upon any narrow construction, of the word "amend" in Rule 64, but upon a broad general principle applicable to all such powers.

106. It appears to me, therefore, that "the motions or propositions" which may properly be passed under Rule 49 will include such resolutions as can - if I may refer again to the words of Lord Tomlin - "reasonably be considered to have been within the contemplation of the parties when the contract was made, having regard to the nature and circumstances of the contract,"

107. It is argued that the principal objects of the club are fundamental matters and that they cannot, therefore be altered without the consent of all the members. Generally speaking I would agree that this is so; but I am unable to see how the dissolution of a club involves an alteration of its objects, any more than I can see how a member of a social club has any legal right to regard the continuance of the club as fundamental. Some reliance in this connection was placed on the cases relating to friendly societies, but the difference between the purposes and objects of such societies and those of social clubs make such cases to my mind irrelevant.

108. The question for determination, therefore, resolves itself to this - Is a resolution to wind up a club, proposed and carried in accordance with its rules, one which can reasonably be considered to have been within the contemplation of the members? If we look as we are entitled to look, at the nature and circumstances of the contract there is nothing to suggest that an affirmative answer would be unreasonable. The purpose of a club - social intercourse becomes impossible of attainment if the members cease to be willing or are unable to associate with their fellow members. The fact that a club, in order that

it may exist as such requires at least the tacit co-operation of a majority of its members is I think clear; and if this be so then in any view there is nothing unreasonable (the rules being silent on the point) in it being considered to be within the contemplation of members that the club should be wound up if a majority of members so desire. It is not perhaps irrelevant to point out that had the Rani Khet Club been incorporated as many clubs have been incorporated under the Companies Act, 1913, it could have been wound up voluntarily for any reason whatever if it so resolved by a special resolution.

109. Moreover when we consider the rules themselves I think we find evidence that it was not within the contemplation of the members that the dissolution of the club was dependent upon the consent of all. Rule 6 begins by providing that if, upon a dissolution of the club, there remain any assets after the payment of its debts and liabilities, such assets shall be paid to or distributed among the members in equal shares. The rule then continues as follows:

Notice of the dissolution will be published in two prominent English daily papers in India and two in England for one week and all claims will be submitted "by members within four months of the date of publication of the notice.

110. The object of this provision is, in my "view, to give notice to all the members, both in India and in England, of the fact that the club has gone (not will go) into dissolution in order that such members may submit their "claims" within a prescribed period after which they would not be taken into consideration. The kind of claim contemplated by the rule is, I think, a claim to share in the surplus assets; and the existence, of such a provision clearly envisages the possibility of some members being unaware of the fact of the club having been dissolved. It is I think a provision inserted for the protection of the interests of members which would be use necessary unless a resolution to wind up the club could be passed at a general meeting duly? convened and held in accordance with the rules of the club. It is to my mind inconsistent with the view that a dissolution can be achieved only with the consent of all the members. The fact that there is no specific rule which lays down the manner in which the club is to go into dissolution, when taken in conjunction with the fact (as is shewn by the existence of Rule 6) that the dissolution of the club was within the contemplation of the framers of the rules, points also, I think, to the conclusion that the question was intended to be one to be decided at a general meeting in accordance with the provisions of Rule 49. Upon a true construction of the rules, therefore, I am of opinion that the plaintiff's contention cannot be sustained.

111. Then it is said by the plaintiff that if unanimity is not required, the resolution of the majority that the club must be wound up must be passed in good faith. Although the protagonists in this case were examined and cross-examined at great length, no evidence to support the allegation of bad faith was forthcoming and counsel for the plaintiff did not think it necessary to refer to the evidence in his concluding address. The plaintiff's case was not one of misrepresentation; it is not alleged that he was deceived and, in the

circumstances, it appears unnecessary to say more on this point.

112. Two further submissions were made on behalf of the plaintiff, but neither is, I think more than a variation of his main contention. It is said that as a dissolution necessarily involves an alienation of the club property and as no such alienation can be valid without the consent of all the members, there can be no dissolution. But if in this case, as is my opinion, the dissolution of the club can validly be effected otherwise than with the unanimous consent of all the members, then all such steps as are necessary to effect a dissolution must be equally valid. Finally it is said that the committee of the club are trustees of the club property and that the trust could only be extinguished with the consent of all the beneficiaries. But if a trust exists, it is created by the rules of the club and the trustees held the trust property subject to those rules; and if the rules permit of a dissolution at the will of the majority of the members then with the winding up of the club there is an extinguishment of the trust.

113. In my opinion, therefore, the suit fails and should be dismissed with costs.

114. It is a matter of much regret to me that, in this case, I feel constrained to express an opinion which differs from that held by my Lord the Chief Justice and Malik J., and it is I hope unnecessary to say that I do so only with diffidence and after giving to the matter the fullest consideration.

Per Curiam

115. The suit is decreed and reliefs (i) and (ii) are granted. The declaration prayed for in relief (i) is hereby made and the injunctions prayed for in relief (ii) are hereby granted. The remaining reliefs are unnecessary and are not granted. The plaintiff is entitled to recover his costs from the defendants. Let a decree be framed as directed above.